

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

IN RE: BAIR HUGGER FORCED AIR MDL No.: 15-md-02666 (JNE/FLN)
WARMING PRODUCT LIABILITY
LITIGATION

This Document Relates To:

WILLIAM KEY,

Civil Action No.: 17-CV-02581-JNE-FLN

Plaintiff,

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS

NOW COMES Plaintiff, William Key, identified in Defendants' Motion to Dismiss for Failure to Comply with Pretrial Order No. 14 [Dkt. 1124], and by and through undersigned counsel submits this, his Response to Defendants' Motion to Dismiss, and would respectively show the Court the following:

1. In July of 2015, Mr. William Key contacted undersigned counsel regarding an infection and subsequent treatment that he experienced due to the use of a Bair Hugger patient warming device during an orthopedic surgery.
2. Counsel worked to obtain medical records and billing records to move forward with the case. Those records indicated that a Bair Hugger device was used during the original surgery.
3. On July 6, 2017, counsel filed the current action to comply with what was identified as the applicable statute of limitations deadline for the relevant claim.

4. Initial efforts to have Mr. Key complete the Plaintiff Fact Sheet were complicated by the inability to contact the client.
5. Counsel spoke with Mr. Key on November 8, 2017. During this call, Mr. Key stated that a close family member had recently passed and that he would be leaving the country for several weeks.
6. Counsel spoke with Mr. Key on January 8, 2018. During this call, Mr. Key had stated that he had sent the filled-out Plaintiff Fact Sheet to counsel's office a few weeks prior. This Plaintiff Fact Sheet has not been received to date and was presumably lost in the mail.
7. A new Plaintiff Fact Sheet was mailed to Mr. Key in February 2018. Mr. Key confirmed on February 22, 2018 that he was still working on completing this new Plaintiff Fact Sheet.
8. Counsel spoke with Mr. Key on March 2, 2018. Mr. Key stated that he was out of town and would not be returning home until the next week.
9. Mr. Key has made every effort to comply with the Plaintiff Fact Sheet requirement and intends to move forward with his case, but the loss of a close family member, extensive recent travel, and the loss of his initial completed Plaintiff Fact Sheet in the mail have complicated the process.
10. Counsel believes that they will be able to submit an amended Plaintiff Fact Sheet for Mr. Key prior to the hearing date.
11. In the event that counsel is unable to submit an amended Plaintiff Fact Sheet prior to the hearing date, counsel for Plaintiff believe that additional time would allow

them to obtain the necessary information from Mr. Key and complete the Plaintiff Fact Sheet.

12. While counsel has diligently continued their attempts to obtain all information for the Plaintiff Fact Sheet from Mr. Key for several months, those efforts have not been successful to date for the reasons stated above.

13. As a result, counsel has not been able to obtain the necessary information to complete the Plaintiff Fact Sheet for this claim.

Accordingly, undersigned counsel request that the current action not be dismissed with prejudice and that Mr. Key be given an additional sixty (60) days to work with counsel in order to provide the necessary information to cure any alleged deficiencies with the Plaintiff Fact Sheet and to continue the case.

Dated: March 8, 2018

KENNEDY HODGES, LLP

By: /s/ David W. Hodges
David W. Hodges
dhodges@kennedyhodges.com
Gabriel A. Assaad
gassaad@kennedyhodges.com
4409 Montrose Blvd. Ste 200
Houston, TX 77006
Telephone: (713) 523-0001
Facsimile: (713) 523-1116

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

This is to certify that on March 8, 2018 a copy of the forgoing instrument was served on all parties via the Court's electronic filing system.

By: /s/ David W. Hodges

David W. Hodges